

THIRD DAY

(Monday, January 8, 1962)

The Senate met at 11:00 o'clock a.m., pursuant to adjournment, and was called to order by the President Pro Tempore.

The roll was called and the following Senators were present:

Aikin	Moffett
Baker	Moore
Calhoun	Owen
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Hardeman	Rogers
Herring	Schwartz
Kazen	Secrest
Krueger	Smith
Lane	Spears
Martin	Willis

Absent—Excused

Hazlewood	Weinert
Hudson	

A quorum was announced present.

Reverend W. H. Townsend, Chaplain, offered the invocation.

On motion of Senator Aikin, and by unanimous consent, the reading of the Journal of the proceedings of Thursday, January 4, 1962, was dispensed with, and the Journal was approved.

Leaves of Absence

Senator Weinert was granted leave of absence for today on account of illness on motion of Senator Martin.

Senator Hazlewood was granted leave of absence for today on account of illness on motion of Senator Lane.

Senator Hudson was granted leave of absence for today on account of important business on motion of Senator Krueger.

Oath of Office Administered to Parliamentarian of the Senate

The President Pro Tempore administered the Constitutional Oath of Office to Mr. E. Richard Criss, Jr. Mr. Criss was then presented to the Senate as the Parliamentarian.

Report of Standing Committee

Senator Roberts submitted the following report:

Austin, Texas,
January 8, 1962.

Hon. Charles Herring, President of the Senate:

Sir: We, your Committee on Finance, to whom was referred S. B. No. 1, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass as amended and be printed.

ROBERTS, Chairman.

Senate Bills on First Reading

The following bills were introduced, read first time and referred to the committee indicated:

By Senators Parkhouse and Spears:

S. B. No. 11, A bill to be entitled "An Act amending Paragraphs (1) through (11), both inclusive, and Paragraphs (15) and (16) of Section One (1) of Chapter 357, Acts of the 53rd Leg., Regular Session, 1953; changing the name of the Board of Water Engineers to the Texas Water Commission and prescribing certain duties, powers and functions thereof; providing for the appointment of a Chief Engineer and prescribing his duties, powers and functions; enacting other provisions in regard to the administration of the water resources of the State; providing a saving clause; and declaring an emergency."

To the Committee on State Affairs.

By Senator Ratliff:

S. B. No. 12, A bill to be entitled "An Act relating to the validation of the incorporation, boundaries and governmental procedures of certain cities and towns having a population according to the Federal Census of 1960 of not more than six thousand (6,000); amending Section 5 of Senate Bill No. 59, Acts of the 57th Legislature, First Called Session, 1961, codified as Section 5 of Article 974d-9, Vernon's Texas Civil Statutes, so as to make the provisions of that Act inapplicable to cities and towns in counties having a population of one hundred thousand (100,000) or more according to the last preceding Federal Census, which cities or towns are involved in litigation on the ef-

fective date of the original Act or on the effective date of this amendment, questioning the legality of such incorporation; providing for severability; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

By Senator Ratliff:

S. B. No. 13, A bill to be entitled "An Act relating to the validation of the incorporation, boundaries and governmental procedures of certain cities and towns of four thousand, five hundred (4,500) inhabitants or less; amending Section 5 of House Bill No. 482, Acts of the 57th Legislature, Regular Session, 1961, codified as Section 5 of Article 966h, Vernon's Texas Civil Statutes, so as to make the provisions of that Act inapplicable to cities and towns in counties having a population of one hundred thousand (100,000) or more according to the last preceding Federal Census, which cities or towns are involved in litigation on the effective date of the original Act or on the effective date of this amendment, questioning the legality of such incorporation; providing for severability; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

Senate Concurrent Resolution 4

Senator Parkhouse offered the following resolution:

S. C. R. No. 4, Granting W. H. Nichols & Company, Inc., permission to sue the State of Texas.

Whereas, On or about the 22nd day of June, 1960, W. H. Nichols & Company, Inc., of Dallas, Texas, a Texas corporation, entered into a contract and agreement for the relocation of the Missouri-Kansas-Texas Railroad as a part of Texas Highway Department Project I-10-7(14)767, in Harris County, Texas; and

Whereas, It is claimed by W. H. Nichols & Company, Inc., that it was caused to do extra or additional work and provide additional labor and materials in its performance of said work due to an erroneous interpretation and construction of the plans and specifications governing said work by the agents of the State of Texas, the Texas Highway Department, and Engineers having control of the performance of said work, and it is also

claimed that due to the unreasonable, unauthorized, unfair and arbitrary actions of said agents of the State of Texas, the Texas Highway Department, and its Engineers that W. H. Nichols & Company, Inc., was coerced and compelled to perform said extra work to its damage and cost in the amount of \$5,153.23; and

Whereas, Said W. H. Nichols & Company, Inc., the Texas corporation aforesaid, desires to sue the State of Texas to determine if the State of Texas is liable for damages and the cost of said alleged extra or additional work and, if so, to determine the amount of such damages and costs; now, therefore, be it

Resolved by the Senate of the State of Texas, the House of Representatives concurring, That W. H. Nichols & Company, Inc., of Dallas, Texas, a Texas corporation, is hereby granted permission to sue the State of Texas, State Highway Engineer, and the Texas Highway Department in any court of competent jurisdiction in Harris County, Texas, and to join the State of Texas, the State Highway Engineer, and the Texas Highway Department as a party defendant with George Consolidated, Inc., Lorraine M. George, Century Construction Company, and Maxwell Construction Company, a joint venture having the prime contract on said project, to determine whether or not the State of Texas is liable in damages and, if liable, the amount of any damages and costs suffered and incurred by said W. H. Nichols & Company, Inc., as a result of any extras, measurements, grade requirements, deletions, errors, erroneous interpretations of plans and specifications, delays, or damages for duress and coercion, exercised and imposed upon said contractor by any of the agents, servants, associates, employees, or engineers of the State of Texas and the Texas Highway Department upon or connected with said project, or damages for any wrongful, unreasonable, arbitrary or capricious acts or failures to act committed by any of the persons representing the State of Texas, its Highway Department, its associates and engineers; and be it further

Resolved, That nothing herein shall be construed as an admission on the part of the State of Texas or any of the Departments or Agencies of the State of Texas, or of any political

subdivisions of the State of Texas as to the validity of any allegations or claims asserted in said suit, but that all allegations or claims asserted in said suit must be proved as in other suits under the same rules of evidence and the same laws as apply in and govern the trial of other civil cases; and be it further

Resolved, That nothing herein shall be construed as a waiver of any defenses, of fact or of law, that may be asserted by or available to the State of Texas, or any of the Departments or Agencies of the State of Texas in said suit, but all such defenses are hereby specifically reserved; and be it further

Resolved, That service of citation and any other legal process shall be served upon the Attorney General of the State of Texas. Service of process upon this officer shall have the force and effect as the service of process upon a defendant in any other civil case, according to the Rules of Civil Procedure as promulgated and adopted by the Supreme Court of Texas; and be it further

Resolved, That the sole purpose of this resolution is to grant permission to W. H. Nichols & Company, Inc., to bring suit against the State of Texas and join the State of Texas in a suit against the prime contractor aforesaid, and no admission of liability or any fact is made in any way by the passage of this resolution.

The resolution was read and was referred to the Committee on Jurisprudence.

Senate Concurrent Resolution 5

Senator Parkhouse offered the following resolution:

S. C. R. No. 5, Commending the Institute of Certified Texas Assessors of the Texas Association of Assessing Officers.

Whereas, Studies by the Commission on State and Local Tax Policy show there was collected in Texas \$730 million in ad valorem tax revenues in 1960, and that collections from this tax are growing at the rate of \$53 million per year; and

Whereas, The property tax is by far the most important single source of revenue to local governments in Texas; and

Whereas, The State Constitution and laws require equal and uniform assessments as the basis for fair distribution of the property tax burden within each local taxing unit; and

Whereas, The fair appraisal and assessment of real and personal property for tax purposes requires a high level of professional competence; now, therefore, be it

Resolved, by the Senate of Texas, and the House of Representatives concurring, That the Institute of Certified Texas Assessors of the Texas Association of Assessing Officers be recognized and commended for its efforts to raise the standards of assessment professionalization through its program of education, testing and professional designation; and be it further

Resolved, That the Texas Association of Assessing Officers be encouraged to accelerate, expand and extend its educational activities through the programs of its local chapters and the Institute of Tax Assessors, conducted in cooperation with the Institute of Public Affairs of The University of Texas, to the end that local governments in Texas may be further strengthened by development of an adequate number of qualified, objective and unbiased assessors of property values.

PARKHOUSE
FULLER

The resolution was read.

Senator Parkhouse asked unanimous consent to consider the resolution immediately.

There was objection.

Senator Parkhouse then moved to suspend the regular order of business and take up S. C. R. No. 5 for consideration at this time.

The motion prevailed by the following vote:

Yeas—25

Aikin	Lane
Baker	Martin
Calhoun	Moffett
Colson	Owen
Creighton	Parkhouse
Crump	Patman
Dies	Ratliff
Fuller	Reagan
Herring	Roberts
Kazen	Schwartz
Krueger	Secret

Smith Willis
Spears

Nays—2

Hardeman Rogers

Absent

Moore

Absent—Excused

Hazlewood Weinert
Hudson

Senator Owen offered the following amendment to the resolution:

Amend S. C. R. No. 5 by deleting the words recognized or recognize wherever it shall appear.

The amendment was adopted.

The resolution as amended was then adopted.

Record of Votes

Senators Hardeman and Rogers asked to be recorded as voting "Nay" on the adoption of S. C. R. No. 5.

Senate Bill 6 on Second Reading

The President Pro Tempore laid before the Senate on its second reading and passage to engrossment:

S. B. No. 6, A bill to be entitled "An Act validating all proceedings in connection with county bonds heretofore favorably voted for the purpose of erecting, repairing and equipping courthouse and jail buildings authorizing the issuance and delivery of such bonds; providing the Act shall not validate proceedings where the validity thereof has been or is being questioned on the effective date thereof in a court of competent jurisdiction if such litigation is ultimately determined against the validity thereof; enacting other provisions relating to the subject; and declaring an emergency."

The bill was read second time and was passed to engrossment.

Record of Vote

Senator Hardeman asked to be recorded as voting "Nay" on the passage of S. B. No. 6 to engrossment.

On motion of Senator Lane and by unanimous consent the vote by which

S. B. No. 6 was passed to engrossment was reconsidered.

Senator Lane offered the following amendment to the bill:

Amend S. B. No. 6 by striking out all above the enacting clause and inserting in lieu thereof the following: "An Act validating all proceedings in connection with county bonds heretofore favorably voted for the purpose of erecting, repairing and equipping courthouse and jail buildings and county branch office buildings; authorizing the issuance and delivery of such bonds; providing the Act shall not validate proceedings where the validity thereof has been or is being questioned on the effective date thereof in a court of competent jurisdiction if such litigation is ultimately determined against the validity thereof; enacting other provisions relating to the subject; and declaring an emergency."

The amendment was adopted.

Record of Vote

Senator Hardeman asked to be recorded as voting "Nay" on the adoption of the above amendment.

The bill as amended was then passed to engrossment.

Record of Vote

Senator Hardeman asked to be recorded as voting "Nay" on the passage of S. B. No. 6 to engrossment.

Senate Bill 6 on Third Reading

Senator Lane moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that S. B. No. 6 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—24

Aikin	Lane
Baker	Martin
Calhoun	Moffett
Colson	Moore
Creighton	Parkhouse
Dies	Patman
Fuller	Ratliff
Herring	Reagan
Kazen	Rogers
Krueger	Schwartz

Secrest
Smith

Spears
Willis

Nays—4

Crump Owen
Hardeman Roberts

Absent—Excused

Hazlewood Weinert
Hudson

The President Pro Tempore then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

Yeas—23

Aikin	Moore
Baker	Parkhouse
Calhoun	Patman
Colson	Ratliff
Creighton	Reagan
Dies	Rogers
Fuller	Schwartz
Herring	Secrest
Kazen	Smith
Krueger	Spears
Lane	Willis
Martin	

Nays—5

Crump Owen
Hardeman Roberts
Moffett

Absent—Excused

Hazlewood Weinert
Hudson

Co-author of Senate Bill 1

On motion of Senator Moffett and by unanimous consent he will be shown as co-author of S. B. No. 1.

Executive Session

Senator Dies asked unanimous consent for the Senate to go into Executive Session at 11:44 o'clock a.m. today.

Accordingly, the President Pro Tempore directed all those not entitled to attend the executive session of the Senate to retire from the Senate Chamber and instructed the Sergeant-at-Arms to close all doors leading from the Chamber.

At the conclusion of the executive session the Secretary of the Senate

informed the Journal Clerk that the Senate had confirmed the following nominations of the Governor:

To be a member of the Texas Railroad Commission, to fill the unexpired term of Judge Olin Culberson, deceased: Ben Ramsey of San Augustine, San Augustine County.

To be a member of the Texas Board of Corrections, for a six-year term to expire February 2, 1967: Morris Roberts of Victoria, Victoria County.

To be a member of the State Board of Water Engineers, for a six-year term to expire August 19, 1967: Joe D. Carter of Sherman, Grayson County (designated Chairman).

In Legislative Session

The President Pro Tempore called the Senate to order as in Legislative Session at 12:00 M today.

Senate Bill 1 Ordered Not Printed

On motion of Senator Colson and by unanimous consent S. B. No. 1 was ordered not printed.

Recess

On motion of Senator Hardeman the Senate at 12:02 o'clock p.m. took recess until 2:00 o'clock p.m. today.

After Recess

President Pro Tempore called the Senate to order at 2:00 o'clock p.m. today.

Senate Bill 1 on Second Reading

The President Pro Tempore laid before the Senate on its second reading and passage to engrossment:

S. B. No. 1 A Bill to be entitled "An Act amending Article 9.25 of Chapter 9, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, and Subsection (4b) of Section 2, Article XX, House Bill No. 8, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, (Article 7083a), as amended, to provide for the maintenance of Farm to Market Roads and to require the expenditure of certain amounts for the construction of newly designated Farm to Market Roads; making certain appropriations; providing severability; and declaring an emergency."

The bill was read second time.

Senator Colson offered the following committee amendment to the bill:

Amend Senate Bill No. 1 by striking from the last paragraph of Section 2 the words "Section (5)" and inserting in lieu thereof the words "Subsection (5) of Section 2."

The committee amendment was adopted.

Senator Colson offered the following amendment to the bill:

Amend Senate Bill No. 1 by striking the last three lines of paragraph 1 of Article 9.25 on page 1 beginning with the words "each fiscal year," and by striking the first five lines of paragraph 2 of Article 9.25 on page 1 beginning with the words "Each month" and ending with the word "shall" and inserting in lieu thereof the following:

"each fiscal year, revert (1) to the Highway Motor Fuel Tax Fund, and (2) to the Funds prescribed in Section (6a) of Article 9.13, as provided in this Chapter, in proportion to the amounts originally derived from such respective sources. The same shall then be allocated as provided in Article 9.13 of this Chapter and Section (6a) thereof, and in this Article 9.25, in the proportions above prescribed.

Each month the Comptroller of Public Accounts, after making all deductions for exempt refund purposes and for the Funds derived from 'unclaimed refunds' as provided in Article 9.13 of this Chapter, and for the enforcement of the provisions of this Chapter, shall allocate and deposit the net remainder of the taxes collected under the provisions of this Chapter, as follows: one-fourth ($\frac{1}{4}$) of such tax shall"

Question—Shall the amendment by Senator Colson to S. B. No. 1 be adopted?

At Ease

The President Pro Tempore announced at 2:10 p.m. that the Senate would stand At Ease Subject to the Call of the Chair.

In Legislative Session

The President Pro Tempore called the Senate to order as in Legislative Session at 2:24 o'clock p.m. today.

Question—Shall the amendment by Senator Colson to S. B. No. 1 be adopted?

On motion of Senator Colson the amendment was adopted.

Record of Vote

Senator Lane asked to be recorded as voting "Nay" on the adoption of the above amendment.

On motion of Senator Colson and by unanimous consent the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

Senate Bill 1 on Third Reading

Senator Colson moved that Senate Rule 32 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S. B. No. 1 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—26

Aikin	Moore
Baker	Owen
Calhoun	Parkhouse
Colson	Patman
Creighton	Ratliff
Crump	Reagan
Dies	Roberts
Herring	Rogers
Kazen	Schwartz
Krueger	Secrest
Lane	Smith
Martin	Spears
Moffett	Willis

Nays—2

Fuller	Hardeman
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Absent—Excused

Hazlewood	Weinert
Hudson	

The President Pro Tempore then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and passed by the following vote:

Yeas—26

Aikin	Calhoun
Baker	Colson

Creighton	Parkhouse
Crump	Patman
Dies	Ratliff
Herring	Reagan
Kazen	Roberts
Krueger	Rogers
Lane	Schwartz
Martin	Secrest
Moffett	Smith
Moore	Spears
Owen	Willis

Nays—2

Fuller	Hardeman
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Absent—Excused

Hazlewood	Weinert
Hudson	

Recess

On motion of Senator Martin the Senate at 2:41 o'clock p.m. took recess until 10:30 o'clock a.m. tomorrow.

THIRD DAY

(Continued)

(January 9, 1962)

After Recess

The Senate met at 10:30 o'clock a.m. and was called to order by the President Pro Tempore.

Senate Resolution 6

Senator Dies offered the following resolution:

Whereas, Miss Mary Elizabeth Jacobs has retired as hostess in the Senate Reception Room after many years of service; and

Whereas, She has been associated with the Senate since 1917 and has long been considered a member of the "Senate family"; and

Whereas, Miss Jacobs is a most gracious lady who has patiently, expeditiously, and cheerfully carried out her duties and has been of inestimable service to the members of the Senate as well as to the public generally; and

Whereas, Miss Jacobs will be missed by the grateful membership of the Texas Senate; now, therefore, be it

Resolved, That the Members of the Senate of the Fifty-seventh Legislature, Third Called Session, express to Miss Mary Jacobs their appreciation for all her years of faithful and efficient work and extend to her their

very best wishes for her future happiness; and be it further

Resolved, That when the Senate adjourns this day it do so in recognition of her contribution to the Senate, and that a copy of this Resolution be sent to Miss Mary Elizabeth Jacobs as a small expression of the sentiments of the Members of the Texas Senate.

**HERRING
DIES**

Signed—Aikin, Baker, Calhoun, Colson, Creighton, Crump, Fuller, Hardeman, Hazlewood, Hudson, Kazen, Krueger, Lane, Martin, Moffett, Moore, Owen, Parkhouse, Patman, Ratliff, Reagan, Roberts, Rogers, Schwartz, Secrest, Smith, Spears, Weinert and Willis.

The resolution was read.

On motion of Senator Aikin, the names of all the Senators were added to the resolution as signers thereof.

The resolution was then adopted.

Senate Bills on First Reading

The following bills were introduced, read first time and referred to the committee indicated:

By Senator Smith:

S. B. No. 14, A bill to be entitled "An Act authorizing Cities and Towns in this State, regardless of how incorporated, but which are located within or which have contracted or may hereafter contract with any Municipal Water Authority or other District organized under Section 59 of Article XVI of the Texas Constitution, for a supply of untreated water, to acquire either separately or jointly by gift, dedication, purchase, condemnation or otherwise, property located inside or outside such Cities and Towns for the purpose of providing water purification and treatment facilities; authorizing the acquisition and construction of all necessary improvements and facilities for such purpose and the issuance of tax supported bonds or warrants, or revenue supported bonds, for the purpose authorizing such Cities and Towns to sell and lease such improvements and facilities; to jointly operate and maintain same; to levy taxes for the maintenance thereof, to contract for supplying water treatment to other cities and towns; to make rules and regulations; validating water treatment contracts heretofore